

CMS PROPOSES INCREASED PENALTIES FOR FAILURE TO COMPLY WITH HOSPITAL PRICE TRANSPARENCY RULE

The Centers for Medicare and Medicaid Services (CMS) recently issued a proposed rule that would increase financial penalties for hospitals that fail to comply with the CY 2020 Hospital Price Transparency final rule. Among other things, the final rule requires hospitals to publish a list of their standard charges as a comprehensive machine-readable file, and in a consumer friendly format. The current maximum civil monetary penalty (CMP) for a hospital’s noncompliance is \$109,500 per year, regardless of the hospital’s size or the scope of its noncompliance.

Under the proposed rule, CMS would have the ability to penalize larger hospitals with increased CMPs up to a maximum of \$2,007,500 per year, using a sliding scale based on the noncompliant hospital’s bed count (as specified in their most recent final cost report).

As currently proposed, the maximum CMPs per year for noncompliance would be determined in accordance with the following sliding scale:

- For noncompliant hospitals with 30 beds or less, the maximum daily CMP remains unchanged at \$300.
- For noncompliant hospitals with between 31 and 550 beds, the maximum daily CMP would be determined by multiplying the number of beds times \$10.
- For noncompliant hospitals with 550 or more beds, the maximum daily CMP would be \$5,500.

These maximum penalties would apply even if a hospital is in violation of multiple discrete requirements of the rule.

If the proposed rule is finalized without any changes, a full calendar year of non-compliance would result in a maximum CMP of \$109,500 per year for hospitals with 30 beds or less (365 days x \$300 per day), and a maximum CMP of \$2,007,500 per year for hospitals with 550 beds or more (\$365 days x \$5,500 per day). CMS believes this sliding scale approach would not overly penalize smaller hospitals, while also providing a sufficient incentive for all hospitals to comply.

CMS’s proposed action comes in response to consumer complaints and a high rate of hospital noncompliance with the rule based on early studies, including evidence that noncompliance is fairly high among larger hospitals. Given the significant amount of work involved in gathering and publishing the required data in a compliant manner, hospitals are urged to consider their response if the proposed rule is finalized, particularly larger hospitals in light of the significantly increased penalties that may be imposed. CMS is currently seeking comments on the proposed rule, which will be published in the Federal Register on August 4, 2021.

If you need any assistance with understanding or complying with the proposed or final rules, please contact the Garfunkel Wild attorney with whom you regularly work, or contact us at info@garfunkelwild.com.

For more information, the proposed rule may be accessed at: <https://public-inspection.federalregister.gov/2021-15496.pdf>.

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